IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 120

GENE MITCHELL GRAY, LINCOLN ANDERSON BLAKENEY, JOSEPH HUTCH PATTERSON and JACK ALEXANDER,

Appellants,

vs.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF TENNESSEE, ETC., *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

BRIEF FOR APPELLANTS

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Appellants,

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Appellees.

BRIEF FOR APPELLANTS

Opinions Below

After notice and hearing, the statutory three-judge District Court for the Eastern District of Tennessee disclaimed jurisdiction as a statutory three-judge court and remanded the cause for proceedings before a single judge. An opinion setting forth the reasons for this action was filed on April 13, 1951, and appears at pages 35-40 of the record. It is not officially reported.

Without further hearing or notice to the parties, District Judge ROBERT L. TAYLOR, in whose district the complaint had been filed, on April 20, 1951, filed an opinion in which he found that appellants had been denied the equal protection of the laws but refused to grant affirmative relief. The cause was retained "for such orders as may

be proper when it appears that the appropriate law has been finally declared." That opinion is reported in 97 F. Supp. 463 and may be found at pages 40-47 of this record.

Jurisdiction

Jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1253 and 2101(b), this being a direct appeal from an order which, in effect at least, denied, after notice and hearing, appellants' application for a preliminary and permanent injunction to restrain the enforcement by appellees of constitutional and statutory provisions of the State of Tennessee, and a December 4, 1950 order of the Board of Trustees of the University of Tennessee, on the grounds that these aforesaid provisions and order deny to appellants the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States.

Appellants in their complaint contested the constitutionality of these provisions and order, and injunctive relief was specifically sought (R. 1-20). In their answer, appellees defended their refusal to admit appellants to the University of Tennessee on the grounds that they had no other recourse under the constitution and statutes of the state (R. 25-27). Thus, the constitutionality of the order of an administrative agency and of laws of the State of Tennessee was squarely in issue.

Statement of the Case

Appellants, having met all lawful requirements, made due and proper application for admission to the graduate and law schools of the University of Tennessee. Gene Mitchell Gray sought permission to enroll in the graduate school commencing in the fall quarter of 1950, and Jack

Alexander desired approval of his application for enrollment in the graduate school beginning in the winter quarter of 1951. Both Lincoln Anderson Blakeney and Joseph Hutch Patterson desired to enroll in the first-year class of the law school in the winter quarter of 1951 (R. 9).

The University of Tennessee is the only state institution offering the courses appellants desire to pursue, and they would have been admitted except for the fact that they are Negroes (R. 6). On December 4, 1950, appellees, the Board of Trustees of the University of Tennessee, met and denied appellants' application solely because of their color (R. 14). Its action was embodied in the following formal order:

> "Whereas, the Constitution and the Statutes of the State of Tennessee expressly provide that there shall be segregation in the education of the races in schools and colleges in the State and that a violation of the laws of the State in this regard subjects the violator to prosecution, conviction, and punishment as therein provided; and,
>
> "Whereas, this Board is bound by the Constitutional provision and acts referred to;
>
> "Be it therefore resolved, that the applications by members of the Negro race for admission as students into The University of Tennessee be and the same are hereby denied" (R. 14).

The applicable state constitution and statutory provisions upon which the above order was based are:

> Article 11, Section 12 of Constitution of Tennessee.
>
> ". . . And the fund called the common school fund, and all the lands and proceeds thereof . . . heretofore by law appropriated by the General Assembly of this State for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, . . . and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the

State, and for the equal benefit of all the people thereof. . . No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. . . ."

Section 11395 of the Code of Tennessee

". . . It shall be unlawful for any school, academy, college, or other place of learning to allow white and colored persons to attend the same school, academy, college, or other place of learning."

Section 11396 of the Code

". . . It shall be unlawful for any teacher, professor, or educator in any college, academy, or school of learning, to allow the white and colored races to attend the same school, or for any teacher or educator or other person to instruct or teach both the white and colored races in the same class, school, or college building, or in any other place or places of learning, or allow or permit the same to be done with their knowledge, consent or procurement."

and

Section 11397 of the Code

". . . Any person violating any of the provisions of this article, shall be guilty of misdemeanor, and, upon conviction, shall be fined for each offense fifty dollars, and imprisonment not less than thirty days nor more than six months."

Appellants thereupon filed on January 12, 1951, a complaint in the court below in the nature of a class suit, in which application was made for both a preliminary and a permanent injunction to restrain the enforcement of the December 4th order of the Board of Trustees, Article 11, Section 12 of the Constitution and Sections 11395, 11396 and 11397 of the Code of Tennessee, on the grounds that the aforesaid order and provisions under attack deprived

appellants of rights secured under the Fourteenth Amendment to the Constitution of the United States (R. 1-20).

On February 1, 1951, appellees filed their answer in which no material allegations in appellants' complaint were controverted and in which the denial of appellants' admission to the University of Tennessee was defended on the grounds that such denial was required by the constitution and statutes of the state (R. 25-27).

On February 12, 1951, appellants filed a motion for judgment on the pleadings (R. 28). The court below, which had been convened pursuant to Title 28, United States Code, Sections 2281 and 2284 (R. 28-29), held a hearing in Knoxville, Tennessee, on March 13, 1951, and on April 13, 1951, handed down an opinion in which jurisdiction was disclaimed, the three-judge court was ordered dissolved and the cause ordered to proceed before District Judge ROBERT TAYLOR, in whose district the complaint had been filed (R. 35-40).

On April 20, 1951, Judge TAYLOR ruled that appellees' refusal to admit appellants to the University of Tennessee constituted a denial of the equal protection of the laws but refused to issue any affirmative order in enforcement of appellants' rights (R. 40-47). Appellants thereupon brought the cause here on direct appeal. This Court, on October 15, 1951, ordered a hearing on the merits, postponing further consideration of jurisdiction and the motion to dismiss pending such hearing (R. 53).

Errors Relied Upon

The court below erred:

1. In refusing to grant appellants' motion for judgment on the pleadings in that appellees' order, refusing appellants' admission to the University of Tennessee, solely because of their color, made pursuant to the constitution and statutes of Tennessee was an unconstitutional deprivation of appellants' rights.

2. In holding that the issues raised did not involve the constitutionality of the constitution and statutes of the State of Tennessee and of the order of the appellees as an administrative agency of the state, for the reason that in the order refusing appellants admission and in their answer to appellants' complaint, appellees seek to justify their refusal on the grounds that the constitution and statutes of Tennessee make mandatory their denial of appellants' applications.

3. In refusing to grant appellants' application for a temporary and permanent injunction as prayed for in their complaint.

4. In holding that this cause does not come within the jurisdiction of a district court of three judges as such jurisdiction is defined in Title 28, United States Code, Sections 2281 and 2284.

5. In ordering the dissoluton of the three-judge court and in remanding the cause to District Judge Robert Taylor sitting alone, since under Title 28, United States Code, Sections 2281 and 2284, a single District Judge is without power and authority to grant or deny the injunctive relief herein prayed for.

Summary of Argument

On December 4, 1950, appellees, the Board of Trustees of the University of Tennessee, issued a formal order denying appellants' admission to the graduate school and law school of the University of Tennessee, because of their race. This action was taken pursuant to Article 11, Section 12 of the Constitution and Sections 11395, 11396 and 11397 of the Code of Tennessee. These provisions make it unlawful for white and Negro persons to attend the same school or college, and violators are subject to criminal prosecution. Appellants contend that the order, the constitutional and statutory provisions conflict with the Fourteenth Amendment to the Constitution of the United States and are, therefore, invalid. Application for injunctive relief to restrain enforcement by appellees of this unconstitutional state policy was made in the lower court pursuant to Title 28, United States Code, Section 2281. Appellees rely upon Article 11, Section 12 of the Constitution and Sections 11395, 11396 and 11397 of the Code as a complete defense, and allege that they have no recourse other than to refuse to admit appellants to the University of Tennessee because of these state provisions.

Although actually upholding the constitutionality of Article 11, Section 12 of the Constitution and Sections 11395, 11396 and 11397 of the Code, the court below ruled, that appellants' right to contest this question in a proceeding of this nature had been foreclosed by decisions of this Court sustaining the constitutionality of state laws requiring racial segregation. In effect, the court found that appellants' claim that the state's policy was unconstitutional was not substantial. The only issue which appellants could raise, or had raised according to the court below, was one of "unjust discrimination . . . under the Equal Protection Clause . . . and not the constitutionality of certain statutes of the state of Tennessee" (R. 39-40). On

this basis, it was held that the jurisdictional requirements for a district court of three judges under Title 28, United States Code, Section 2281, had not been met; the three-judge court was ordered dissolved and the cause remanded for proceedings before Judge TAYLOR.

We are confident that the court was in error and that all the requisite requirements essential to the jurisdiction of a three judge federal court have been met. Appellants' claim of unconstitutionality is that they have been and are being denied educational opportunities and advantages by the state equal to those available to all other persons. That this allegation presents a substantial federal question can hardly be open to doubt at this stage of the development of our law.

While there is sharp disagreement between appellants and the court below with respect to interpretation of the substantive law determinative of appellants' rights, whatever view one takes, we submit, he is forced to conclude that the jurisdictional requirements for a three judge court have been met in this case.

We interpret the *Sweatt* and *McLaurin* cases to mean that a state cannot enforce distinctions based upon race with respect to graduate and professional education available in state institutions. While *Plessy* v. *Ferguson* was not overruled, whatever may be the impact of the *separate but equal* doctrine on the state's power to impose racial classifications and distinctions in general, in the area of state graduate and professional education, that doctrine is now totally without significance. The court below has taken this Court's discussion of *Plessy* v. *Ferguson* in the *Sweatt* case to mean that enforced racial segregation in state graduate and professional schools is still valid under the *separate but equal* doctrine. In view of this unreconcilable conflict in interpretation we hope the Court will use this occasion to clarify the question once and for all.

The real problems involved in this appeal are procedural—whether appellant may seek review of the action of the court below on direct appeal or by petition for writ of mandamus. Persuasive considerations tend to support either remedy. Our position is that this Court has jurisdiction on appeal, but if it does not, mandamus will lie.

Title 28, United States Code, Section 1253, grants a direct appeal to this Court from a grant or denial of a preliminary or permanent injunction by a three judge court. Had the court below dismissed appellants' complaint or expressly denied their application for injunctive relief, there would be no question concerning the jurisdiction of this Court on direct appeal. Here, however, the court's order did not directly do either of those things. It merely dissolved the three judge court and remanded the cause to Judge TAYLOR sitting alone for further proceedings. This being an appropriate case for a three judge federal court, a single federal judge is without power to grant appellants the relief for which they have applied. By dissolving the only court having jurisdiction of the case, the lower court made it impossible for appellants to secure injunctive relief. Appellants' application for a preliminary and permanent injunction has been denied, therefore, as effectively as if a judgment expressly denying the injunction or dismissing the complaint had been entered. For those reasons this Court has jurisdiction to review this case on direct appeal.

ARGUMENT

I

Appellants are entitled to admission to the University of Tennessee subject only to the same rules and regulations applicable to all other students.

The substantive rights which appellants are here seeking to enforce have been conclusively determined by prior decisions of this Court. A state cannot deny educational facilities to one racial group while offering it to others; and where such facilities are available in only one state institution, Negroes cannot be barred by the state from attending that institution pursuant to a policy of enforced racial separation. *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337. When educational facilities are offered to white persons, they must be offered to Negroes at the same time. *Sipuel* v. *Board of Regents*, 332 U. S. 631. A state cannot impose a policy of racial separation or make any other distinctions grounded in race or color with respect to professional and graduate education offered at state universities. In short, all persons meeting the requirements for admission are entitled to attend graduate and professional schools of state universities subject only to same rules and regulations applicable to all other persons. *Sweatt* v. *Painter*, 339 U. S. 629; *McLaurin* v. *Oklahoma*, 339 U. S. 637; *Board of Supervisors, La. State University* v. *Wilson*, 340 U. S. 909; rehearing den. 340 U. S. 939; *McKissick* v. *Carmichael*, 187 F. 2d 949 (4th Cir. 1951); cert. denied 341 U. S. 951. From the cases it is clear, therefore, that any state action, whether in the form of an order of an administrative agency, constitutional provision or statute which prohibits appellants' admission to the University of Tennessee is unconstitutional and void.

While this Court did not specifically strike down the segregation statutes and laws of Texas and Oklahoma under which those states sought to impose a policy of racial segregation with respect to their graduate and professional schools, the Court declared such policy void and unconstitutional. See *McLaurin* and *Sweatt* cases. The only possible effect of those decisions was that such laws were no longer operative.

It is true that the Court stated in *Sweatt* case at pages 635 636 that it could not "agree with respondents that the doctrine of *Plessy* v. *Ferguson*, 163 U. S. 537 . . . requires affirmation of the judgment below. Nor need we reach petitioner's contention that *Plessy* v. *Ferguson* should be reexamined in the light of contemporary knowledge respecting the purposes of the Fourteenth Amendment and the effects of racial segregation. See *supra*, page 631." At that page the Court said that *McLaurin* and *Sweatt* cases "present different aspects of this general question: To what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university? Broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court." The Court found that the segregated law school in the *Sweatt* case and the special rules and regulations imposed because of race in the *McLaurin* case deprived both of equal educational opportunities as required by the Fourteenth Amendment. On reading the two cases it is clear that the Court means that the constitutional requirement that equal educational opportunities be afforded cannot be met in graduate and professional schools where the state seeks to enforce racial distinctions and seeks to treat persons differently because of race. Hence, the Fourteenth Amend-

ment denies to the state the power to make racial distinctions or classifications with respect to that phase of the state's educational process.

The statement quoted above with respect to *Plessy* v. *Ferguson*, which the court below interprets as "eliminating from the case the question of constitutionality of the State statute which restricted admission to the University to white students" (R. 38-39), was intended to emphasize that the Court's decisions specifically concerned graduate and professional education only. But see *Rice* v. *Arnold*, 340 U. S. 848. Whatever present weight the *separate but equal* doctrine may carry, it is clear that it can no longer be used to determine whether equality of educational opportunities in graduate and professional education is available. Here where state laws seek to deny appellants admission to graduate and professional schools of the state university, they are clearly unconstitutional. The court below believes them to still have vitality. We think the Court should take this opportunity to clarify this point.

II

This case is one in which a three-judge court has jurisdiction and in which review by this Court on direct appeal is warranted.

A preliminary and a permanent injunction to restrain the enforcement of appellees' order of December 4, 1950, refusing to admit appellants to the University of Tennessee pursuant to Article II, Section 12 of the Constitution of the State and Sections 11395, 11396, and 11397 of the Code of Tennessee is here being sought on the grounds that the order, constitutional provision and statutes deprive appellants of their rights to equal educational opportunities as secured under the Fourteenth Amendment

to the Constitution of the United States. Appellees are state officers, *Missouri ex rel. Gaines* v. *Canada; supra,* and the Board of Trustees of the University of Tennessee is an administrative board within the meaning of Title 28, United States Code, Sections 2281 and 2284. *McLaurin* v. *Board of Regents, supra; Board of Supervisors, La. State University* v. *Wilson, supra.* Appellants' claim of unconstitutionality presents a substantial federal question. *Sweatt* v. *Painter, supra; Sipuel* v. *Board of Regents, supra.*

The court below seeks to redefine the issues raised by describing them as allegations of unjust discrimination under the equal protection clause rather than of constitutionality of state segregation statutes. The court stated that state legislation requiring segregation was not unconstitutional because of the feature of segregation. *Plessy* v. *Ferguson, supra; McCabe* v. *Atcheson, T. & S. F. Ry. Co.,* 235 U. S. 151; *Berea College* v. *Kentucky,* 211 U. S. 45; and *Gong Lum* v. *Rice,* 275 U. S. 78 are cited in support of this contention. It is alleged that *Sweatt* v. *Painter* did not change this rule. What we take the court to mean is that in the light of these decisions appellants' claim that the state policy is unconstitutional has been foreclosed and that hence that claim does not present a substantial federal question.

We have already attempted to point out that the court was in error in its analysis of the *Sweatt case.* We cannot accept in toto either the court's analysis of the other cases and do not believe them to be applicable to this case. Even assuming *arguendo,* however, the correctness of the court's view, we fail to see how it affects appellants' right to have their applications for injunctive relief heard and determined by a three judge court. At the very least those cases stand for the proposition that enforced racial segregation is permissible as long as the facilities provided Negroes are equal to those available to other racial groups.

This is the condition which must be satisfied if segregation laws are to be held constitutional under the *separate but equal* doctrine. *Ergo,* where that condition has not been met, the segregation is unconstitutional. Certainly where the record shows that the University of Tennessee is the only state institution offering the courses appellants desire to pursue; that they have been denied admission thereto solely because of their race pursuant to state policy; and appellants seek to enjoin enforcement of that policy on the grounds that it conflicts with the federal constitution, a substantial claim of unconstitutionality has been made. See *Missouri ex rel Gaines* v. *Canada, supra.*

Thus all ingredients essential to the jurisdiction of a three judge federal court have been met. See *Stratton* v. *St. Louis S. W. Ry. Co.,* 282 U. S. 10; *Smith* v. *Wilson,* 273 U. S. 388; *Moore* v. *Fidelity & Deposit Co,* 272 U. S. 317; *International Garment Workers Union* v. *Donnelly Garment Co.,* 304 U. S. 243; *Ex parte Hobbs,* 280 U. S. 168; *Phillips* v. *United States,* 312 U. S. 246; *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.,* 292 U. S. 386; *Ex parte Poresky,* 290 U. S. 30; *In re Buder,* 271 U. S. 461; *Oklahoma Natural Gas Co.* v. *Russell,* 261 U. S. 290; *Query* v. *United States,* 316 U. S. 486; *American Federation of Labor* v. *Watson,* 327 U. S. 582.[1] Of course, equity jurisdiction may be withheld in the public interest in exercise of sound discretion, see *Spector Motor Service* v. *McLaughlin,* 323 U. S. 101; *Chicago* v. *Fieldcrest Dairies, Inc.,* 316 U. S. 168; *Burford* v. *Sun Oil Co.,* 319 U. S. 315; but the public interest in this case demands that the chancellor exercise his power. See *McLaurin* v. *Board of Regents, supra.*

Decisions of a properly convened three judge court may be reviewed by this Court on direct appeal, and if the case

[1] For discussion of three judge court requirements, see: Hutcheson, *A Case For Three Judges* (1934), 47 Harv. L. Rev. 795; Berueffy, *The Three Judge Federal Court* (1942), 15 Rocky Mt. L. Rev. 64; Bowen, *When Are Three Judges Required* (1931), 16 Minn. L. Rev. 1; and Notes in 28 Ill. L. Rev. 839 (1934); 32 Mich. L. Rev. 853 (1934); 38 Yale L. J. 955 (1929).

is not appropriate for decision by a three judge court, appeal to this Court does not lie. *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co., supra; Jameson & Co.* v. *Morgenthau*, 307 U. S. 171; *Public Service Commission of Missouri* v. *Brashear Freight Lines, Inc.*, 312 U. S. 784; *Gully* v. *Interstate Natural Gas Co.*, 292 U. S. 16; *International Garment Workers Union* v. *Donnelly Garment Co., supra. Pendergast* v. *United States*, 314 U. S. 574; *American Insurance Co.* v. *Lucas*, 314 U. S. 575. Yet notwithstanding lack of jurisdiction on appeal, this Court has issued orders for the purpose of carrying out the objectives of Section 2281 by virtue of authority to determine whether the lower court acted within its jurisdiction under that statute. See *Gully* v. *Interstate Natural Gas Co., supra.*

Had the court below expressly granted or denied the preliminary and permanent injunctions for which appellants prayed, appellants would clearly have been entitled to review by direct appeal, *McLaurin* v. *Board of Regents, supra; Board of Supervisors* v. *Wilson, supra;* or if the court had dismissed the complaint, direct appeal would have been the appropriate remedy, *Grubb* v. *Public Utilities Commission*, 281 U. S. 470; *Sprunt & Son* v. *United States*, 281 U. S. 249; and see Bowen, When Are Three Judges Required (1931), 16 Minn. L. Rev. 1. Here, however, the court below merely disclaimed jurisdiction and remanded the cause for proceedings before a single district judge. Unless this order constitutes a denial of injunctive relief and/or a dismissal of the complaint, it would not appear that direct appeal will lie.

In order to determine whether this order is appealable, it is essential to examine its effect in respect to appellants' cause of action. Appellants have met all the requirements essential to jurisdiction of a three judge court and for purposes of this suit a hearing and determination by a three judge court is mandatory. Under such circumstances a single judge cannot assume or be awarded jurisdiction,

Stratton v. *St. Louis S. W. Ry. Co., supra; Ex parte Collins*, 277 U. S. 565; *Ex parte Williams*, 277 U. S. 267. See also *Riis & Co.* v. *Hoch*, 99 F. 2d 553 (10th Cir. 1938); *Smith* v. *Dudley*, 89 F. 2d 453 (8th Cir. 1937). Even if appellants had not sought an injunction on grounds of unconstitutionality, in which case a three judge court would not have been necessary, *International Garment Workers Union* v. *Donnelly Garment Co., supra*, appellees seek to defend their conduct on grounds that it was mandatory under Tennessee law and that they would be acting illegally in admitting appellants. Thus, the issue of the conflict between the Tennessee law and the Board's order with the federal constitution would have to be decided, and the convening of a three judge court would have been rendered necessary without regard to appellants' complaint. At any rate, having properly elected to proceed under Section 2281, this is not a situation where it may be appropriate for a court to require appellants to seek a different mode of redress.[2]

By dissolving the only court which has jurisdiction to grant appellants the relief sought, the court below has effectively denied appellants injunctive relief. Such relief cannot be granted by a single judge. Had Judge TAYLOR attempted to issue an injunction restraining appellees from enforcing the state's policy, it could only have been issued on the grounds that this policy violated the constitution. If Judge TAYLOR had granted injunctive relief under those

[2] Usually this occurs when the issues involved concern constitutionality under the state constitution, and state courts have not spoken. Normally federal jurisdiction is withheld pending determination by the state courts of the state question. See *Railroad Commission of Texas* v. *Pullman*, 312 U. S. 496; *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478; *Chicago* v. *Fieldcrest Dairies Inc., supra; Spector Motor Service* v. *McLaughlin, supra; American Federation of Labor* v. *Watson, supra.* See also: Pogue, *State Determination of State Law and the Judicial Code* (1928), 41 Harv. L. Rev. 623; Frankfurter *Distribution of Judicial Power Between United States and State Courts* (1928), 13 Corn. L. Q. 499; Lockwood, Maw and Rosenberry, *The Use of the Federal Injunction in Constitutional Litigation* (1939), 43 How. L. Rev. 426. But here the sole and only question is whether the state policy conflicts with federal constitution and hence the doctrine of the *Pullman* case has no application.

circumstances, he would have exceeded his jurisdiction. *Ex parte Metropolitan Water Co.*, 220 U. S. 539; *Ex parte Williams, supra; Stratton* v. *St. Louis S. W. Ry., supra; Ex parte Northern Pacific Ry.*, 280 U. S. 142; *Ayrshire Collieries Corp.* v. *United States*, 331 U. S. 132. Actually, therefore, the court below has denied appellants injunctive relief and their order should be as subject to appeal as a decree expressly denying the injunctive relief sought. See *General Electric Co.* v. *Marvel Rare Metals Co.*, 287 U. S. 430.

Although Judge TAYLOR has declared appellants are entitled to admission to the University of Tennessee, and this decision was handed down last August, the state has made no move to accept appellants as students at the University. It is clear that only by a restraining order against enforcement of the state policy barring their admission because of race, on grounds that this is in conflict with the federal constitution, will appellants be admitted to the University of Tennessee. The substantive law on this subject is clear and conclusive, and appellants should not be further delayed in their educational pursuits through procedural delays. This case should be reviewed on the merits and, we submit, this Court has jurisdiction on appeal.

Conclusion

Direct appeal to this Court from decisions of three judge district courts provides a speedy method for review of important constitutional questions. Under the decisions of this Court, there can be no doubt that appellants are entitled to be admitted to the University of Tennessee. The injury to them, in terms of loss of time and of potential development, caused by appellees' illegal conduct is irremedial. Further procedural delays in vindicating their rights will merely compound the injury. Review of this case on the merits by this Court on direct appeal will serve

to hasten the final determination of appellants' rights to attend the University of Tennessee.

For these reasons, we submit, a direct appeal to this Court should be allowed, and the cause reversed and remanded with instructions to the court below to enjoin appellees from enforcing their order, the constitution and statutes of the state pursuant to which appellants have been denied admission to the University of Tennessee.

Respectfully submitted,

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